

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ACQIS LLC, v. ALCATEL-LUCENT USA, INC.	CASE NO. 6:13-CV-638-LED LEAD CASE PATENT CASE
ACQIS LLC, v. EMC CORP.	CASE NO. 6:13-CV-639-LED PATENT CASE

**JOINT MOTION OF PLAINTIFF ACQIS LLC AND DEFENDANT EMC
CORPORATION TO VACATE THE DOCKET CONTROL ORDER PENDING
TRANSFER**

Plaintiff ACQIS LLC and Defendant EMC Corporation jointly move to vacate the current Docket Control Order (D.I. 76) in light of the pending transfer of the ACQIS v. EMC case to the District of Massachusetts. This Joint Motion only seeks to vacate the Docket Control Order as it applies to ACQIS v. EMC. The parties seek this relief not for delay, but for good cause and so that justice may be served.

The following facts are relevant to this Joint Motion:

1. On September 10, 2014, this Court issued an Order conditionally granting EMC's motion to transfer to the District of Massachusetts effective upon entry of the Court's *Markman* Opinion. (D.I. 88.)
2. On November 26, 2014, EMC filed an unopposed motion to compel the production of documents designated as confidential by third parties from ACQIS's prior

litigation (“Unopposed Motion to Compel”). (D.I. 116.) The withheld documents include, for example, prior expert reports and testimony on infringement, validity, and damages, including from one of ACQIS’s currently disclosed experts, Thomas Gafford. The resolution of the unopposed motion to compel will affect the parties’ litigation positions and the scope of the case.

3. On January 2, 2015, ACQIS moved to amend and supplement its infringement contentions against EMC (“Motion to Amend”). (D.I. 128.) The resolution of ACQIS’s Motion to Amend will affect several ongoing discovery disputes between the parties and the scope of the case.

4. On February 12, 2015, a *Markman* hearing was held before this Court.

5. Under this Court’s current Docket Control Order, opening expert reports are due June 5, 2015; letter briefs for summary judgment and *Daubert* motions are due June 26; and rebuttal expert reports are due July 6.

6. Because EMC’s pending Unopposed Motion to Compel and ACQIS’s pending Motion to Amend may affect the parties’ litigation positions, the complexity of the case, the upcoming expert reports, and the scope of the parties’ claim construction, infringement, damages, and validity cases, and considering the upcoming transfer to Massachusetts, the parties believe that it will be more efficient to extend the upcoming deadlines. Vacating this Court’s Docket Control Order will increase efficiency by giving the parties an opportunity to account for this Court’s *Markman* ruling and any ruling on EMC’s Unopposed Motion to Compel and ACQIS’s Motion to Amend, in fact and expert discovery.

7. Since the Massachusetts court will issue a new schedule after this case is transferred, vacating the Docket Control Order will not waste judicial resources or otherwise delay the ultimate resolution of this case. Once transferred, the parties agree to meet and confer in good faith to prepare an appropriate schedule for submission to the Massachusetts Court.

The parties therefore respectfully request that the Court vacate the Docket Control Order as applied to ACQIS v. EMC in favor of a new schedule to be issued by the District of Massachusetts court.

Dated: April 10, 2015

Respectfully submitted,

<p>By: <u>/s/ Peter J. Sauer</u></p> <p>James P. Brogan Wayne O. Stacy, State Bar #24008070 Sarah J. Guske Peter J. Sauer (<i>pro hac vice</i>) Mikaela Stone (<i>pro hac vice</i>) COOLEY LLP 380 Interlocken Crescent, Ste. 900 Broomfield, CO 80021-8023 Telephone: (720) 566-4000 Facsimile: (720) 566-4099 jbrogan@cooley.com wstacy@cooley.com sguske@cooley.com psauer@cooley.com mstone@cooley.com</p> <p>Joseph M. Drayton (<i>pro hac vice</i>) COOLEY LLP 1114 Avenue of the Americas New York, NY 10036 Phone: (212) 479-6000 Fax: (212) 479-6275 jdrayton@cooley.com</p> <p>Thomas J. Friel, Jr. COOLEY LLP 101 California Street, 5th Floor San Francisco, CA 94111-5800 Telephone: (415) 693-2000 Facsimile: (415) 693-2222 tfriel@cooley.com</p> <p>George E. Chandler, State Bar #04094000 Michael K. Mathis, State Bar #24006078 W. Perry Zivley, Jr., State Bar #22280050</p>	<p>By: <u>/s/ Benjamin Hershkowitz (with permission)</u></p> <p>Josh A. Krevitt Benjamin Hershkowitz Nicholas Rylan Fung Gibson Dunn & Crutcher 200 Park Ave., 48th Floor New York, NY 10166 T: 212-351-2410 F: 212-351-6210 jkrevitt@gibsondunn.com bhershkowitz@gibsondunn.com nfung@gibsondunn.com</p> <p>Nathan R. Curtis David J. Tobin Mandy Pezzano Gibson Dunn & Crutcher 2100 McKinney Avenue Dallas, TX 75201-6912 T: 214-698-3423 F: 214-571-2961 ncurtis@gibsondunn.com dtobin@gibsondunn.com mpezzano@gibsondunn.com</p> <p>Blair A. Silver Gibson Dunn & Crutcher 1050 Connecticut Ave., NW Washington, D.C. 20036-5306 T: 202-955-8690 F: 202-530-9583 bsilver@gibsondunn.com</p> <p>Eric Findlay Brian Craft</p>
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on this 10th day of April, 2015. As such, this **JOINT MOTION OF PLAINTIFF ACQIS LLC AND DEFENDANT EMC CORPORATION TO VACATE THE DOCKET CONTROL ORDER PENDING TRANSFER** was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Peter J. Sauer